

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 422

SPONSOR: Senator Geller

SUBJECT: Law Practice Restrictions

DATE: March 18, 2004

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Lang</u>	<u>JU</u>	<u>Fav/2 Amendments</u>
2.	_____	_____	<u>CJ</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This bill increases the penalty for the unlicensed practice of law from a first degree misdemeanor to a third degree felony. Language is deleted under this bill which precludes a sheriff from practicing law in Florida. This bill clarifies that a clerk or a deputy clerk of the court may not practice law in Florida, except in the case of representing the clerks' office. This bill also provides that a person may not be denied the right to practice law based on gender, race or color.

This bill substantially amends s. 454.23 and s. 454.18 of the Florida Statutes.

## II. Present Situation:

### *Unlicensed Practice of Law*

An unlicensed practice of law violation can involve a disbarred or suspended attorney continuing to practice in Florida, or a layperson engaging in law practice in the state. While the admission of attorneys to practice is a constitutionally designated court function, various regulations are provided for in statute.<sup>1</sup> Therefore, both the Florida Statutes and the Florida Bar Rules address unlicensed practice, and both authorize the imposition of sanctions.<sup>2</sup> In this way, the constitutional role of the court to govern the process for admission to practice also encompasses the "duty to protect the public from laypeople who claim that they are licensed to practice law, but are not."<sup>3</sup> In assessing whether someone has committed an unlicensed practice of law

<sup>1</sup> Section 15 of Article V of the Florida Constitution grants exclusive jurisdiction to the Florida Supreme Court to regulate "the admission of persons to the practice of law and the discipline of persons admitted."

<sup>2</sup> See *State v. Palmer*, 791 So.2d 1181 (Fla. 1 DCA 2001) for the holding that legislating the unlicensed practice of law is not a constitutional violation of the separation of powers, as the state constitution grants exclusive jurisdiction to the judiciary over admission to practice, not the unlicensed practice of law.

<sup>3</sup> See *The Florida Bar v. Abreu*, 833 So.2d 752 (Fla. 2002)

violation, the courts generally look to whether the individual has engaged in the traditional tasks of a lawyer.<sup>4</sup> In so doing, the court views this type of behavior by an unqualified individual as potentially significantly jeopardizing a client's interests.<sup>5</sup>

***Statutory Authority for Unlicensed Practice of Law***

Chapter 454 of the Florida Statutes governs attorney practice. A judge are not permitted to enter into partnerships with prosecuting attorneys appearing before their court, nor is a law firm partner permitted to appear before a judge-partner.<sup>6</sup> Attorneys are prohibited from being certain sureties on bonds.<sup>7</sup> Disbarred or suspended attorneys who directly or indirectly practice law or represent themselves as attorneys are guilty of a first degree misdemeanor.<sup>8</sup> Assisting suspended or disbarred attorneys in continuing to practice law subjects the assisting attorney to disbarment and a second degree misdemeanor charge.<sup>9</sup> Current law also prohibits persons who are not licensed by the Supreme Court of Florida from practicing law. Certain officers, such as sheriffs, clerks and deputies are prohibited from practicing law, unless the officer is representing the office or agency as an attorney.<sup>10</sup> An unlicensed practice of law violation carries a first degree misdemeanor charge.<sup>11</sup>

A first degree misdemeanor is punishable by up to 1 year in jail and up to \$1,000 in fines. A third degree felony is punishable by up to five years in prison and up to \$5,000 in fines.<sup>12</sup>

***Florida Bar Rules on the Unlicensed Practice of Law***

Florida Bar cases are considered to be quasi-civil in nature, although indirect criminal contempt cases do provide for jail time.

Rule 1-8.2. of the Florida Bar Rules relates to the unlicensed practice of law and provides:

The board of governors shall act as an arm of the Supreme Court of Florida for the purpose of seeking to prohibit the unlicensed practice of law by investigating, prosecuting, and reporting to this court and to appropriate authorities' incidents involving the unlicensed practice of law in accordance with chapter 10.

Chapter 10 of the Florida Bar Rules governs the investigation and prosecution of the unlicensed practice of law. The Florida Supreme Court is required to create one standing committee and at

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<sup>4</sup> See *The Florida Bar v. Rapoport*, 845 So.2d 874 (Fla. 2003), in which the court issued an injunction based on a fact situation involving an attorney licensed out-of-state who gave legal advice, prepared and submitted claims, represented clients in proceedings, and held himself out as a lawyer.

<sup>5</sup> See *The Florida Bar v. Neiman*, 816 So.2d 587 (Fla. 2002), which involved behavior by a non-lawyer that included "misleading claimants and others so they believed he was an attorney; convincing people he could adequately represent them in their legal matters; making huge personal profits, while giving the actual claimants only small portions of the settlements; and even causing one claimant to lose certain pension benefits."

<sup>6</sup> s. 454.19, F.S.

<sup>7</sup> s. 454.20, F.S.

<sup>8</sup> s. 454.31, F.S.

<sup>9</sup> s. 454.32, F.S.

<sup>10</sup> s. 454.18, F.S.

<sup>11</sup> s. 454.23, F.S.

<sup>12</sup> s. 775.082 and s. 775.083, F.S.

least one circuit committee in each judicial circuit on the unlicensed practice of law.<sup>13</sup> A standing committee, consisting of 37 members, eighteen of them non-lawyers, is appointed by the court, on the advice of the Board of Governors of the Florida Bar.<sup>14</sup> The standing committee is charged with receiving circuit committee reports, to determine whether cases warrant litigation.<sup>15</sup> Circuit committees are also appointed by the court, on the advice of the Board of Governors, to consist of at least three members, one of whom is a non-lawyer. Circuit committees are charged with investigating and dispatching reports of unlicensed practice of law.<sup>16</sup> If the standing committee agrees to move forward, a petition is then filed with the Supreme Court. A referee-judge is assigned to hold a hearing in the county where the respondent resides.<sup>17</sup>

The Bar Rules provide that the Florida Rules of Civil Procedure apply to injunctive proceedings.<sup>18</sup> The Florida Rules of Criminal Procedure apply in criminal contempt cases, and the Florida Bar Rules provide for punishment of indirect criminal contempt of up to \$2,500 in fines and up to five months incarceration.<sup>19</sup> The Florida Supreme Court serves as the final arbiter, and reviews each recommendation of the referee-judge.<sup>20</sup>

Limited oral communications to assist someone in filling in blanks on a legal form is not generally considered to rise to the level of the unlicensed practice of law, but directly providing legal services as a non-lawyer does.<sup>21</sup>

The Florida Bar procedures apply in a parallel fashion to those provided in statute, although the majority of cases that come before the State are referred by the Bar.

### III. Effect of Proposed Changes:

This bill amends s. 454.23, F.S., by increasing the penalty for unlicensed practice of law from a first degree misdemeanor to a third degree felony.

This bill also amends s. 454.18, F.S., by removing the prohibition against sheriffs practicing law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

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<sup>13</sup> R. Regulating Fla. Bar 10-1.2.

<sup>14</sup> R. Regulating Fla. Bar 10-3.1.

<sup>15</sup> R. Regulating Fla. Bar 10-3.2.

<sup>16</sup> R. Regulating Fla. Bar 10-4.1.

<sup>17</sup> R. Regulating Fla. Bar 10-7.1.

<sup>18</sup> R. Regulating Fla. Bar 10-7.1.

<sup>19</sup> R. Regulating Fla. Bar 10-7.2.

<sup>20</sup> R. Regulating Fla. Bar 10-7.1.

<sup>21</sup> R. Regulating Fla. Bar 10-2.1.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1, Judiciary:

Clarifies that a sheriff or deputy sheriff who is an attorney may not practice law, be a member of a law firm, or represent him or herself as an attorney on any letterhead, and that an attorney is only authorized to serve with a sheriff's auxiliary as a volunteer.

#2, Judiciary:

Reinserts language providing that a sheriff is authorized to represent the office or agency as an attorney.